IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 779 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGDISHCHANDRA BHIMARAO JADAV

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 779 of 1991

MR KB ANANDJIWALA, Advocate for the Appellant

MS. HARSHA DEVANI, Addl.PP for the Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 19/07/2003

ORAL JUDGEMENT

#. The appellant who was serving at the relevant time as Zonal Officer of Khadia Zone in the Ahmedabad office of the Civil Supplies Department, challenges his conviction for the offences under Section 161 of the I.P.C. and

Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947, and sentence of simple imprisonment for one year and fine of Rs. 500/- imposed for each of the offences by the learned Special Judge, Ahmedabad by her judgment and order dated 30th August, 1991 in Special Case No. 2 of 1989, with a direction that the substantive sentences imposed shall run concurrently.

#. As per Charge exh. 2, it was alleged against the appellant that while he was working as Zonal Officer in the Khadia Zone of the office of the Civil Supplies Department in the City, he had demanded Rs. 300/- by way of illegal gratification from the complainant Fakir Mohammed for issuing permit of Pamolien oil and accepted the same on 10.2.88 in his office, and thereby, committed an offence under Section 5(1)(d) read with Section 5 (2) of the Prevention of Corruption Act and Section 161 of the I.P.C.

2.1 The prosecution version was that the complainant Fakir Mohammed was running a Fair Price Shop at Jamalpur in the City in the name of Lucky Kirana Stores, and for the purpose of his business, he was required to approach the Zonal Officer, situated in the multi-storey building, Lal Darwaja, Ahmedabad, for obtaining permit for the quota of Pamolien oil which was to be sold to the ration card holders, who were registered with his Fair Price Shop. Since the complainant was not getting required quota of Pamolien oil for some months, he went to the accused-Zonal Officer on 20th January, 1988 for release of the quota of wheat, rice and Pamolien oil. He told the accused that the people in the locality were becoming impatient and furious due to insufficient supply of Pamolien oil. The accused thereupon told him that if he wanted sufficient quota of Pamolien oil to be regularly released to him, he would have to pay Rs. 500/- each month. The complainant expressed his inability to pay such high amount and after some bargaining, the figure was struck at Rs. 300/-. At that time, the complainant was having Rs. 150/-, which he paid to the accused, telling him that he would bring Rs. 300/- when he comes next time for the release of further quota. On getting Rs. 150/-, the accused released the quota of the commodity. Thereafter, on 5th February, 1988, the complainant sent his brother Ahmed for the release of the quota, for the month of February, 1988, of 20 bags of wheat and 4 barrels of Pamolien oil. Permit for wheat was issued, but the accused informed his brother that for the issuance of permit for Pamolien oil he should send the complainant. Therefore, in the afternoon, the

complainant met the accused and was told that unless he paid Rs. 300/-, permit will not be issued. The complainant pleaded that he did not have enough amount. Thereafter, on 9.2.'88, he again sent his brother to the accused for release of 20 bags of wheat and 4 barrels of Pamolien oil. But the accused asked his brother to send the complainant to meet him. In the afternoon, the complainant went to the accused who told him that unless he was paid Rs. 300/-, the quota will not be released. He, however, accepted the application of the complainant for release of quota and issuance of permit. The accused gave him permit for wheat, but the permit for Pamolien oil was not given and he was told that unless he paid Rs. 300/-, Pamolien oil will not be released. The accused was infuriated with the complainant and threatened him that his Fair Price Shop would require to be checked and inquiry be made for reporting to the higher officer. The complainant thereupon was upset over the behaviour of the accused and he therefore approached the Anti-Corruption Bureau on 10.2.'88 and lodged his complaint against the accused for demanding illegal gratification from him. A trap was successfully laid on 10.2.'88, and the accused was apprehended having demanded and accepted the bribe amount of Rs. 300/- which currency notes were coated with anthracene powder. The accused was charge-sheeted on 19.1.'89 and tried by the Special Judge for the aforesaid offences.

#. The defence version of the accused as reflected in his statement recorded under Section 313 of the Code of Criminal Procedure was that he had demanded the amount of Rs. 500/- on 5.2.'88 towards payment of fine which was imposed on the complainant. According to the accused, on 9.2.'88, he had refused to issue permit for 4 barrels of Pamolien oil and asked the complainant's brother Ahmed to send the complainant, because, the complainant was not paying up the fine. The accused in his statement also admitted that on 10.2.'88, the complainant had come to his office along with the Panch witness, and that the accused asked him in presence of the Panch witness, whether he had brought the amount; but has explained by stating that the demand of the said amount was towards fine which was required to be paid by the complainant. The accused also gave a statement in writing, which too contains his defence version. In that statement at Exh.3 collectively, he stated that the work of realising fines imposed under the orders made against the permit holders by his higher officers was to be done at the Zonal Office level and for that purpose, the licensees were being reminded to pay up the fine and when they did not pay the fine despite such reminder, they were coerced to pay the

amount for its recovery at the time of issuance of permits. In para-4 of the said statement, it was stated that between 1982 and 1987, action was taken against the complainant and fines were imposed on him. On 12.11.'87, fine of Rs. 500/- was imposed on the complainant for unauthorised sale and irregularity in the distribution of sugar. The complainant was avoiding payment of that fine. Moreover, an amount of Rs. 138/- was also due from the complainant towards the price of the ration cards which was not being paid by him despite his being reminded to pay this amount. Ultimately, the complainant had paid up the amount on 22.8.'88. In para-5 of the statement, it is stated that around February, 1988, pressure was brought on the complainant to pay up the fine amount by the accused and at times, permit of lesser quota was issued. Therefore, the complainant was very displeased with the accused and wanted to harass the employees of the Zonal Office. In para-12 of the statement, it was stated that the complainant had come to the office of the accused at 12.00 noon when the Inspectors Shri B.R. Goswami and Smt. Vibhabhen Mehta of the Civil Supplies Department were sitting with him. Some businessmen who had come to get permits were also there. The complainant had given him application for release of quota of Pamolien oil and he had put his endorsement on that application. The complainant took the application with endorsement to Shrimali who prepared the permit. At that time, the accused got up and went near the table of Shrimali to sign the permit. The table of Shrimali was on the other side of the wall from the table of the accused. He had gone to Shrimali to ensure that the permits were immediately issued so that no inconvenience was caused to the customers. He had signed the permit and when he was bending and signing the permit, the complainant had taken out a wad of hundred rupee notes from his own pocket and tried to put them in the pocket of the accused whereupon the accused got startled and straightened himself preventing the complainant from putting notes in his pocket by covering his shirt pocket with his hand, as a result of which, the currency notes, instead of getting into the pocket, fell on the ground. In para-13 of his statement, the accused has stated that he had not demanded any bribe from the complainant on 20.1.'88 nor accepted Rs. 150/- on that day. According to him, on that day, he had asked for Rs. 500/- which was the amount of fine and there was no talk about taking of any bribe. He had deleted items of Pamolien oil from the permit earlier, because, the fine amount was not being paid. In para 14 of the statement, he stated that the currency notes fell on the ground when the complainant was trying to put them in his pocket.

#. The learned Trial Judge, on the basis of the material on record, came to a finding that the accused had, by corrupt and illegal means, and abusing his position as a public servant, obtained pecuniary advantage, rendering himself liable for the offence under Section 5(i)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947, and that he had accepted illegal gratification which was not his legal remuneration as a motive or reward to do an official act and to show favour to the complainant in exercise of his official functions, rendering himself liable for the offence under Section 161 of the I.P.C. In the process, the Trial Court held that there was reliable and substantial evidence, adduced by the prosecution, of the complainant, Panch witness, Police Inspector as well as the documentary evidence to pinpoint the guilt of the accused. It was held that the testimony of the witnesses was not shaken in their cross-examination and the trivial aspects that were emphasized did not affect the veracity of their version. It was held that the evidence on record established beyond any reasonable doubt the guilt of the accused on both the counts. The defence put up by the accused that he had demanded the amount towards fine, which the complainant was required to pay and tried to ward off the attempt of the complainant to put the amount in his pocket, was found to be not acceptable by the Trial Court. The Trial Court held that the fact that on 9.2.'88, application for release of Pamolien oil was rejected, but on 10.2.'88, it was immediately granted, was eloquent to suggest that the application of the complainant was rejected on 9.2.88 for no reason and it came to be granted on 10.2.'88 without there being any change of circumstance, and that it was illegal gratification received on 10.2.'88, which prompted the accused to release the quota of Pamolien oil. It was also observed that it was not shown that the Zonal Officer was authorised to accept any fine or penalty amount. The Trial Court also held that it was not possible to believe the defence version that the Zonal Officer had got up and gone to the table of the Clerk Shrimali, where, according to the defence of the accused, the complainant tried to thrust Rs. 300/- in his pocket and he pushed the currency notes away which fell on the ground. It was held that there was no substance in the defence version that the accused had required the complainant to bring the fine amount before permit could be issued, because, no such fine amount was paid by the complainant before issuance of the permit on 10.2.'88.

#. The learned counsel for the appellant contended that

there was no reliable independent evidence to bring home the offences against the accused. He submitted that the complainant was the person who was habitually committing breach of the licensing conditions and the provisions of law for which he was being imposed fine from time to time. By exh. 14, made by the Director of Civil Supplies, he was imposed a fine of Rs. 500/- which he had not paid and that material fact he had suppressed in the complaint. Moreover, even on his own admission, a sum of Rs. 138/- was still due to be paid by him to the department, because, he had paid only Rs. 2000/- towards the amount of Rs. 2,138/- which was collected by him for issuing ration cards. Such type of witness would not inspire any confidence and strict corroboration would be required to support his version. It was further argued that the complainant was an accomplice, because, his say was that on 20th January, 1988, he had requested the accused for releasing the quota of the commodities, including the Pamolien oil and when Rs. 500/- was demanded by the accused he had agreed to pay Rs. 300/per month, and in fact, paid Rs. 150/- for the release that he obtained on 20th January, 1988. It was submitted that the reliance on a complainant of this type required corroboration from an independent source. It was further submitted that regarding initial demand, alleged to have been made on 20th January, 1988, there was no charge against the accused, nor any corroboration to the version of the complainant on that count from any independent source. He further argued that conflicting versions were coming forth in the deposition of the complainant and the Panch, which created doubt over the correctness of the prosecution version. He submitted that as regards the counting of notes to which Panch deposes, the complainant was silent. Moreover, silence of the Panch witness as well as the complainant about the anthracene powder marks inside the pocket of the bushirt of the accused which was seized, was very significant, and the deposition of the Investigating Officer alone, could not be relied upon, nor could the statement made in the Panchnama be accepted in view of such silence of the complainant and the Panch witness in that regard. He further pointed out that in the cross-examination, the Panch witness had stated that the currency notes were picked up by him from the floor and, therefore, there was a material discrepancy in the prosecution version that the notes treated with anthracene powder were recovered from the pocket of the accused and in the version of the Panch witness in his cross-examination that they were picked up from the floor. He submitted that such discrepancy goes to the root of the prosecution case and created a grave doubt on it. The learned counsel further argued that the

Panchnama was not correctly recorded, because, the complainant in his deposition had stated that he was asked and had narrated the version, while the Panch does not say that he was asked about the occurrence. It was argued that it has not come on record that the Panchnama was dictated by the Panch, nor was it coming forth that when the raiding party entered the cabin of the accused, the Panch had disclosed the facts. The Panchnama, exh.17, therefore, could not be trusted as genuine. It was then contended that though independent persons were present at the time of the incident and their statements were recorded, particularly of Shri Goswami and Smt. Vibhaben Mehta, who were two Inspectors working under the accused, they were not examined at the trial. It was submitted that these were material witnesses who could not have been dropped, as they would have thrown light on the incident. It was further argued that the factum of demand by the accused of any bribe was not established. He submitted that even the complainant had admitted that in the month of January, 1988, as against his requirement of 19 barrels of Pamolien, he was, in fact, released 20 barrels of Pamolien oil. According to the learned counsel, investigation was biased, because, the officer, who conducted the trap, carried out further investigation which could not have been done. Such an officer was interested in seeing that the trap succeeds and, therefore, would mould the investigation in that direction. Moreover, he had selected Panch witnesses from the R.T.O. office in which office, earlier, five or six officers were trapped for corruption offences. Since earlier, number of Panchas were selected from the same office, it was reasonable to infer that the Investigating Officer had selected the Panch witnesses from the office where the employees were under pressure because of the earlier traps conducted in that office. The counsel finally submitted that as against this type of prosecution case and the biased investigation, the defence version that the accused had asked the complainant to pay up the fine which was imposed on him under the order exh. 14, issued by the Director of Civil Supplies, and that he had not demanded any bribe was highly plausible. He submitted that the version of the accused that he had tried to ward off when the complainant was attempting to thrust currency notes in his shirt pocket as a result of which the notes fell down on the floor, validly explained the presence of anthracene powder on the edge of his shirt pocket and on his hands and on the pen, and that version was, in fact, was gaining support from what the Panch witness had said in the cross-examination that the currency notes were picked up from the floor. Since the defence version was

plausible, the accused cannot be convicted for the offences with which he was charged, as the prosecution had failed to prove that the accused had demanded the amount towards illegal gratification or accepted it from the complainant on 10th February, 1988.

#. The learned counsel for the appellant, in support of the contentions, relied upon the following decisions:-

[a] Decision of Kanubhai Kantibhai Patel v. The State of Gujarat, reported in XVIII (1) GLH 924 was cited for the proposition that the Panchnama which was not the record prepared on the basis of what was told by the Panch witnesses and what the Panch witnesses heard and saw, could not be relied upon. It was also held that if the demand of bribe is not clearly established and there were discrepancies in the testimony of the witnesses, the accused cannot be held guilty. It was pointed out from para-5 of the judgment that the Court relied upon the decision of the Supreme Court in Bhagvan Singh v. State of Rajasthan, reported in AIR 1976 Supreme Court 985, stating that it was held therein that if everything is done by the police officer, it would be an infirmity in the case which is bound to reflect on the credibility of the prosecution case. This Court held that the credibility of the case of prosecution was certainly suspicious and on that count the prosecution must fail on the ground that the Police Inspector had done everything in the matter right from recording of complaint till the filing of the chargesheet.

[b] The decision in Bhagvan Singh v. State of Rajasthan, reported in AIR 1976 Supreme Court, 985 was cited in support of the contention that the Investigating Officer who had led the raiding party and had conducted the trap could not have carried on the investigation and since in the present case, same person had conducted the trap and the investigation, the credibility of the prosecution case was lost. At this stage, it may only be observed that no such proposition emerges from the decision of the Supreme Court in this case, as has been tried to be argued by the learned counsel who had made similar contention in Kanubhai Patel's case (supra) on the basis of this decision.

[c] Decision of this Court in Kishorchand Mansukhlal Joshi v. State of Gujarat, reported in 1985 G.L.H 103 was cited for the proposition that there should be no doubt left in the mind of the Judge in regard to the credibility and acceptability of the evidence of the complainant and the Panch witnesses in a corruption case,

because, career of a public servant depends upon the evidence of these two persons. It was held that it was required to be borne in mind that the Panch witness was not connected in any manner whatsoever with the complainant, he was not connected with any member of the raiding party, he was independent in so far as his capacity to act as a Panch was concerned and that he was not amenable to any pressure from the complainant side or from the investigating agency.

[d] Decision in G.V. Nanjundiah v. State (Delhi Administration), reported in AIR 1987 Supreme Court 2402, was cited to point out that it was held in para-21 of the judgment that it was common sense that a person would not accept a bribe in the presence of a stranger. In that case, allegation of the contractor and other members of the raiding party was that the contractor had purchased a basket of fruits and some cartons of sweets to justify entrance of the person who would also be witness to handing over of the bribe money. The Court observed that although it was alleged that the appellant had agreed to be present in his house at 7.00 p.m. for the purpose of taking bribe, he was absent and had come back at 8.00 p.m. It was observed in para-22 of the judgment that it was difficult to believe that the payment of the bribe money could be deferred for ten minutes till the arrival of fruits and sweets after they had been in the drawing room on the floor of the house of the appellant.

[e] Decision in Bharatkumar Jaimanishanker Mehta v. State, reported in XXIII (1) GLR 605 was cited for the proposition that the prosecution evidence alone cannot be considered for the purpose of coming to a conclusion as to whether the accused accepted the amount or not. The evidence led by the prosecution, the suggestions made by the defence in cross-examination of the prosecution witnesses, the version given by the defence and the defence witnesses, if any, examined at the trial, everything was required to be considered in its totality and it is to be seen as to whether the total effect of the entire evidence led before the court is of a nature by which the only conclusion possible was that the accused accepted the amount. If such a conclusion is possible then alone it can be held that the prosecution established the case beyond reasonable doubt.

[f] Decision in Gulam Mahmood A. Malek v. State of Gujarat, reported in A.I.R. 1980 Supreme Court 1558 was cited for the proposition to point out that in the case where the complainant in a prosecution for acceptance of bribe, was an accused in four cases and had stated

without compunction that he used to give money to the accused, a Bench Clerk in Court, on several occasions and had launched complaint about demand of bribe after ten days after the alleged demand, though the payment of bribe was made in court-hall the money was recovered in another room after about twenty minutes and no independent witness from the hall was examined, it was held that the accused could not be convicted for accepting bribe on the corroborating testimony of the Panch witness as to recovery of money. It was held that in appreciating the evidence in such case background should not be forgotten.

#. The learned Additional Public Prosecutor, submitted that the learned Trial Judge had given very cogent reasons on the basis of the material on record for holding that the offences levelled against the appellant were duly proved. She submitted that the complainant's version was fully corroborated by his complaint as also by the version of the Panch witness Dayalji, exh. 15 and the Investigating Officer's deposition. She submitted that the Panchnama, exh. 17 fully corroborated the version of the Panch witness on the demand of the amount made by the accused in his presence from the complainant as well as on his having accepted the currency notes of Rs. 300/- from the complainant which were treated with anthracene powder. She pointed out that the Panch witness had denied the suggestion in his cross-examination that when the Investigating Officer entered the chamber of the accused with the raiding party, the currency notes were already lying on the floor. According to her even in his cross-examination, this witness had stuck to his case that the accused had accepted the currency notes and put them in his pocket, and had stated that after the raid took place, he had taken them out of his pocket and thrown them on the floor, which discrepancy was not very significant in view of the fact that on all substantial aspects, the version of the Panch witness was corroborated by the Panchnama and this set of evidence fully corroborated the complainant's version.

7.1 The learned Additional Public Prosecutor also argued that the Panch witness was an independent person and had no interest in the outcome of the prosecution. Merely because he was working in the R.T.O. office, it did not disqualify him and the fact whether earlier traps were conducted for other officers of the R.T.O. office was not relevant at all for appreciating the credibility of the witness. It was submitted that the Panchnama clearly recorded that it was dictated and written as per

what the Panch witnesses had seen and heard. It was also submitted that the anthracene powder marks were noticed inside the shirt pocket of the accused as per the deposition of the Investigating Officer and as narrated in the Panchnama, contents of which, according to the Panch witness were correct. Neither the complainant nor the Panch witness had stated that there were no anthracene powder marks noticed inside the pocket of the shirt of the accused and their silence on that specific point, when no question was asked, cannot be construed so as to mean that they had deposed contrary to the fact that anthracene powder marks were also noticed inside the shirt pocket of the accused. She submitted that this fact was noted even in the original receipt under which articles were recovered from the accused. It was further submitted that the amount of Rs. 500/- was paid by Chalan by the accused on 20.2.'88 as endorsed on the reverse of the original order, exh. 14 and this was done after the accused had put the endorsement, asking his Inspector Smt. Vibhaben Mehta to recover the amount and report within two days. It was pointed out from the endorsement below exh. 14 that the said endorsement was made by the accused after the incident presumably to support his defence version that he had asked for only the amount of fine of Rs. 500/- imposed under the said order from the complainant. Referring to the order exh. 14, the learned Additional Public Prosecutor pointed out that by that order, while imposing fine, it was directed to confiscate the deposit amount of Rs. 500/-. It was submitted that since the amount of deposit of Rs.500/= was confiscated, there was no question of asking the complainant to bring the said amount of fine. She further pointed out that the fines were being paid through Chalan and, therefore also, there was no question of requiring the complainant to bring the amount of fine to the accused. The learned Addl. Public Prosecutor submitted that the evidence adduced by the prosecution was reliable and the defence version was an afterthought. There was, therefore, no valid reason to interfere with the impugned decision of the trial court holding the accused guilty of the offences with which he was charged.

#. The learned Additional Public Prosecutor, in support of her submissions relied upon the following decisions:-

[a] Decision of the Supreme Court in Sailendranath Bose v. The State of Bihar, reported in A.I.R. 1968 Supreme Court 1292 was cited to point out that it was held therein in context of Section 5-A of the Prevention of Corruption Act, 1947 that permission under Section 5-A was a permission to investigate the case and laying the

trap was a part of the investigation. It was held that an investigation is one and indivisible and included all the proceedings under the Criminal Procedure Code for the collection of the evidence conducted by the prosecution or any other person other than a Magistrate who is authorised by a Magistrate in this behalf. It was held that Section 5(A) did not contemplate two sanctions; one for laying the trap and another for further investigation. Once an order under that provision is made, that order covers the entire investigation. A permission given under that provision enables the officer concerned not only to lay a trap but also to hold further investigation.

[b] Decision in State of U.P. v. Zakaullah, reported in (1998) 1 SCC 557, was cited for the proposition that the evidence of the complainant cannot be jettisoned on the mere ground that since he had a grouse against a public servant he might falsely have implicated him. It was held that his evidence may require the Court to scrutinise it with greater care, but it did not call for outright rejection of his evidence at the threshold. The Supreme Court observed that a pedantic approach of the complainant simply on the premise that he was aggrieved against the bribe-taker, would only help the corrupt officials getting insulated from legal consequences. The Supreme Court also held that every citizen is presumed to be an independent person until proved to be dependant on the police or other officials for any purpose whatsoever. It was held that the acquaintance with the police by itself would not destroy a man's independent outlook, and that requirement to have an independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. It was also held that the District Superintendent of Police who had arranged the trap had no interest against the respondent and that the verve shown by him to bring his trap to a success was no ground to think that he had any animosity against the delinquent officer. The evidence of such a witness can be acted upon even without the help of any corroboration.

[c] Decision in the case of Hazari Lal v. State (Delhi Administration), reported in (1980) 2 SCC 390 was cited for the proposition that the fact that the witness was a police officer who had laid the trap, was not sufficient to insist on corroboration. There is no rule of prudence which has crystallized into a rule of law nor indeed any rule of prudence which required that the evidence of such officers should be treated as the evidence of accomplices and there should be insistence on

corroboration. In the facts and circumstances of a particular case, a Court may be disinclined to act upon the evidence of such officer without corroboration, but equally, in the facts and circumstances of another case may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters, there can be no hard and fast rule, nor can be there any precedent.

[d] Decision of this Court in Ambalal Motibhai Patel v. State, reported in 1 GLR 113, was cited for the proposition that in case of interested witness, the Courts must always weigh the evidence with particular caution and if after scrutinising the evidence of an interested witness, the Court finds it safe to accept such evidence, then independent corroboration is not necessary.

#. The complainant who has deposed at exh. 10 was having a Kirana Store in Jamalpur which fell within the jurisdiction of the Zonal Office in which the accused was a Zonal Officer. He has categorically deposed that on 20th January, 1988, when he went to meet the accused, the accused told him that if he wanted regular quota of commodities to be released, he would have to pay Rs. 500/- per month. The commodities were released to the licensees periodically. The witness told him that he did not have sufficient amount. However, for the release on that day, gave him Rs. 150/-. As regards future, after some bargaining it was agreed that Rs. 300/- per month will be paid by the complainant to the accused. He has then deposed to the effect that on 5th February, 1988, he sent his brother for the quota of February and was asked by the accused as to why the complainant had not personally come with Rs. 300/- for the month of February, and deleted the item of oil from the permit asking the brother of the complainant to send the complainant. Thereupon, this witness went to him at 3.00 p.m. and told him that he was not having the amount at that time and would pay him when he comes next time. Thereupon, the accused altered the application and gave permit for four barrels of oil. Again on 9th February,1988, he sent his brother Ahmed for getting permit for twenty bags of wheat and four barrels of oil and at that time also, the accused told him that he would not get the permit and that he should send the complainant i.e. this witness to meet him. Therefore, the complainant went to him in the afternoon at 3.00 O'clock and was told by the accused that since he was not paying the amount as agreed, he would not get the goods. This witness thereupon requested him to release the goods

and told him that he would anyhow arrange to pay the amount. Thereupon, the accused gave him permit only for twenty bags of wheat asking him to bring Rs. 300/- on the next day by 3.00 p.m. The complainant felt that it was too much of a burden to pay Rs. 300/- to the accused every month and he did not want to do so. Therefore, on 10.2.'88, he contacted the office of the Anti-Corruption Bureau and lodged his complaint which is at exh. 20. The complaint was recorded at about 11.00 a.m. on 10.2.'88. Two Panch witnesses were called and the Panch witnesses were appraised of the nature of the complaint by this witness. He then stated about the recording of the first part of the Panchnama and the process of applying anthracene powder to three currency notes of the denomination of Rs.100/- each which he had produced and usual examination under the ultraviolet lamp, and the noting of the numbers of the currency notes in the Panchnama. The treated currency notes were placed by him in his left bushirt pocket and as per the instructions, they were to be given to the accused in the presence of the Panch witness when demanded. The Panch witnesses were given instruction about the role that they were required to play. Thereafter, they all proceeded to the multi-storey building in which the Zonal Office of the concerned Zone was situated. He has then stated that he and the Panch Dayalji entered the Chamber of the accused. The accused asked him to sit. When the complainant produced the application for permit of four barrels of Pamolien oil, the accused asked him whether he had brought the amount. The complainant replied affirmatively. Thereupon, he put his signature on the application, which the complainant took to the Clerk Shrimali who prepared the permit. Thereafter, the complainant came back with that permit to the accused who, before signing in the godown `Nondh' asked him to pay the amount. On such demand being made, the complainant took out the amount from the left pocket of his bushirt and gave it to the accused who accepted it and placed it in his left pocket and thereafter signed the permit. Thereafter, the pre-arranged signal was given and the persons of the raiding party came there. It was about 2.00 pm. at that time. He has then deposed about taking out of currency notes of Rs. 300/- from the shirt pocket of the accused, and the find of the marks of anthracene powder, when examined under the ultraviolet lamp, on the hands and fingers and the shirt pocket of the accused, on his pen and also on the permit which was signed by him in the permit-book. Referring to the application dated 9.2.'88, which was given for the release of the quota, he has stated that the deletion of the item of four barrels was made by the accused in his

presence. Even as regards the erasure on the application dated 5.2.'88, he has stated that it was done by the accused in his presence. He has also stated that the accused made a note in the article 17 as regards four barrels of Pamolien oil. Article 17 was "Nondhvahi" of the shop of the complainant.

10.1 In his cross-examination he has admitted in para-6 that Civil Supplies Department had imposed fine on him four to five times in the past, and that a fine of Rs. 500/- was imposed on him in 1987, which he had not paid until 10.2.'88 in the government treasury. He paid that amount on 20.2.'88 after he was told to pay it by the Zonal Inspector Smt. Vibhaben Mehta. He also admitted that the sum of Rs.138/- was due for payment by him towards the recovery of the amounts charged in the ration cards at the rate of Rs. 2/- per ration card. He has stated that he was required to visit the Zonal Office a couple of times every week. In para-10 of his deposition, he stated that the accused while going to his office, used to pass by his shop every morning and he was taking household articles such as Colgate toothpaste, electric bulb, soap etc. from his shop. He admitted that prior to January, 1988, he was demanding full quota. According to him, he was not given the quota of groundnut oil for the last to months of 1987 and for January, 1988, and he was given less quota of Pamolien oil. He has, however, admitted that in January, 1988 he was given 20 barrels of Pamolien oil as against his entitlement for 19. In paragraph-15 of his deposition he admitted that when he and Panch witness entered the Chamber of the accused, two Inspectors namely, Shri Goswami and Smt. Vibhaben Mehta were present. He sat opposite the chair of the accused, while the Panch witness Dayalji stood by his side. He then stated that Mr. Jadav asked him about the Panch witness and not to the Panch witness. This sentence is relied upon to raise a very unusual contention which does not emanate from the record, that when the Investigating Officer, whose surname was also Jadav and who was leading the raiding party, entered the cabin of the accused Jadav, he had not asked the Panch witness about the happenings but had asked this witness. Statement in para-15 by this witness that Mr. Jadav asked him about the Panch and not to the Panch, was clearly in context of the accused Shri Jadav asking him about the Panch when he took seat and the Panch Dayalji stood by his side. The complainant has then in his cross-examination asserted that two Inspectors who were present at the time when he had entered with the Panch witness the cabin of the accused, went out for some time. He has, in terms, stated that these two Inspectors were

not present when there was talk of demand of money between him and the accused Mr. Jadav, and has denied the suggestion that both of them were present all throughout at that place, during the talk about the exchange of money between him and the accused. He has stated that after the accused Jadav signed the application, which he took for getting the permit prepared and returned to the accused, these two Inspectors were not present there. From this nature of evidence, it can never be argued that both the Inspectors were present even at the time when the talk about the demand of money and its exchange took place between the complainant and the accused. This witness has not at all been shaken on his version that the accused had demanded the amount from him in the presence of the Panch Dayalji by asking the complainant whether he had brought the amount, and that on his affirmative reply, the accused signed the application which was taken by him to Shrimali whose table was just on the other side of the partition of the Chamber of the accused, and, after getting permit prepared, when he again came to the accused where the permit book was brought for his signature by Shrimali, the accused asked for the amount and he had given him the treated currency notes, and then, after placing the amount in his pocket, the accused signed the permit. He has denied the suggestion that the accused did not accept the amount from him or that the Investigating Officer had recovered the amount from the floor.

##. Panch witness Dayalji, who had accompanied the complainant into the cabin of the accused at the time of the incident on 10.2.'88, has deposed at exh. 15 that he, along with other Panch were called from the R.T.O. office by the police. He has deposed as to the nature of the complaint which was filed with which they were acquainted, and the instructions which were given to them, as also the demonstration of anthracene powder, which all were recorded in the first part of the Panchnama, exh. 17. He then stated that when he entered along with the complainant in the cabin of the Zonal Officer Mr. Jadav i.e. the accused, the accused welcomed them and at that time, when the application for Pamolien oil was taken out and given to him by the complainant, he asked whether the complainant had brought the amount of money, to which the complainant replied in the affirmative. Thereafter, the accused put his signature on the application and gave it for preparing permit, and the complainant took that application to the Clerk Shrimali. This witness also accompanied him. The complainant took out his "Nondhvahi" in which he noted down the permit number given to him by Shrimali.

Thereafter, both returned to the accused, where Shrimali brought the permit which he had prepared. He has then stated that the accused at that time asked for the money and the complainant took out the amount and gave it to him which the accused accepted by his right hand, counted and kept it in his front left pocket, and thereafter signed the permit. Thereupon, the complainant went out and gave the signal pursuant to which the raiding party came there. He has then narrated about the fact that anthracene powder marks were noticed on both the hands and fingers of the accused, on the ball pen which was lying on his table, on the pocket of his bushirt as well as on the permit which was prepared and was in the permit book. He stated in his examination-in-chief that he had taken out the amount from the shirt pocket of the accused at the instance of the Police Sub-Inspector and on tallying the numbers of the currency notes with those which were noted in the Panchnama, they were found to be the same. Presence of anthracene powder was noticed through the ultraviolet lamp on these currency notes. He has then deposed as to the seizure of the muddamal articles in detail and in para-10 of his deposition, he has stated that the contents of the Panchnama, exh. 17, which was shown to him were correct. He has stated that the first part of the Panchnama was written in the A.C.B. office, while the second part was written at the place of the incident. In his cross-examination, he has stated that the names of Shri Goswami and Smt. Vibhaben Mehta were noted down, but he did not know as to what inquiry was made by the Police Inspector Shri Jadav from them. In para-14 of his deposition, he has stated that Shrimali was not sitting in the cabin of the accused Shri Jadav, but was sitting behind the partition of Shri Jadav's cabin, and that for going to Shrimali, one had to go out of the cabin of the accused. He has asserted that he had accompanied the complainant to table of Shrimali. He has stated that Shri Jadav had first signed in the "Nondhvahi" and then he had signed in the permit. In para-15 of his deposition, he has stated that circle-mark was made on the bushirt of the accused where anthracene powder marks were noticed. In para-16 he has asserted that they were asked by the accused as to whether money was brought. He has denied that when the raid took place and Inspector Jadav entered, the amount of Rs. 300/- was lying on the floor. He has also categorically denied in para-16 of his deposition that the accused had not put the amount of Rs. 300/-in his pocket. He has, however, stated that after the raid was made by the Inspector Jadav, accused had taken out the amount from his pocket and thrown it on the floor. This witness admitted in his cross-examination that some of the employees of his

R.T.O. office had been Panch witnesses in trap cases. Version of this witness on all material particulars corroborates the version of the complainant and there is absolutely no valid reason to discard his testimony, merely on one sentence that comes out in para-16 to the effect that after the raid took place, the accused had taken out the amount from his shirt pocket and thrown it on the ground. The fact that the demand of amount was made by the accused when this witness accompanied the complainant, is born out clearly from his evidence. The fact that the currency notes of Rs.300/- which were treated with anthracene powder and the numbers of which were already noted in the first part of the Panchnama, were, on demand being made by the accused from the complainant, given by the complainant to the accused, who accepted them and placed them in his bushirt pocket, is also clearly borne out from his evidence. Therefore, both the demand as also the acceptance of the bribe amount is established from the deposition of this independent witness, who fully supports the version of the complainant. The fact that the anthracene powder marks were noticed on the edge of the shirt pocket of the accused, is borne out from the deposition of the complainant and this witness. This witness is fully supported by the contents of the Panchnama on these material aspects of the prosecution version. The panchnama exh.17 clearly mentions at the end that it was correctly recorded as per what was seen, known and narrated by the Panch witnesses. Panch Dayalji when shown this Panchnama categorically stated that its contents were correctly recorded. The attack of the learned counsel against the evidentiary value of Panchnama on the ground that it was not a correct record of what the Panch witnesses had seen or narrated is without any substance.

##. The deposition of P.S.I. Jadav exh. 9 establishes that the anthracene powder marks were also seen inside the shirt pocket of the accused. This, he has stated in para-2 of his deposition without any significant challenge in his cross-examination. This fact is also clearly mentioned in the Panchnama, exh. 17. It is not as if the Panch witness had stated that there were no anthracene powder marks inside the pocket of the bushirt of the accused. In fact, the presence of the anthracene powder also inside the pocket is referred to at item-5 of the receipt, which was given to the accused in respect of the articles which were seized from him. That receipt records at item-5 that the bushirt which was recovered from the accused had anthracene powder marks on the edge of the pocket as well as inside the pocket. Copy of the

said receipt which is at exh. 22 does not reproduce the contents of item-5 correctly for the reasons best known to the person who may have typed it, but the original receipt clearly shows that the anthracene powder marks were found not only on the edge of the pocket but also inside the pocket of the bushirt of the accused. Therefore, there is no substance in the contention that the evidence of the Panch witness be discarded on the basis of a minor discrepancy as regards his version in para-16 of his deposition that after the raiding party came, the accused had taken out the amount from his pocket and thrown it on the floor.

##. The defence of the accused makes a grotesque reading. While he says that he had asked the complainant to bring Rs. 500/- towards the fine which was outstanding to be given to him on 10.2.'88, he in the same breadth says the complainant tried to thrust the amount in his pocket which startled him and as he placed his hand over his pocket to prevent the currency notes from being thrust in it they fell down. If the accused had called for the amount by way of fine to be paid by the complainant as per order exh. 14 (which imposed the fine and simultaneously ordered that the deposit amount of Rs. 500/- should be forfeited towards fine), then there was no reason for him to resent the payment of the amount which he would have accepted as payment of fine if the defence version was true. Furthermore, the fine were paid by treasury chalans and the amount of Rs.500/- said to have been paid on 20.8.'88 was in fact paid in the bank with a treasury chalan. It would also be significant to note that the accused would never have signed the permit if the complainant had tried to thrust the currency notes in his pocket. Both, the pen by which he signed the permit and the permit were found to be having the anthracene powder marks. The defence taken up by the accused appears to be palpably a false defence and does not create any doubt over the reliable evidence of the Panch witness Dayalji, the complainant and the Investigating Officer.

##. The decision of the Supreme Court in Bhagvan Singh v. The State of Rajasthan, reported in AIR 1976 SC 985, on which reliance was placed on behalf of the appellant, can hardly assist the appellant, because, that was a case where the investigation was conducted by a Head Constable who was himself the person to whom the bribe was alleged to have been offered, and who lodged the FIR as informant or the complainant. In that context, it was held that it was an infirmity which was bound to reflect on the credibility of the prosecution case. In the present

case, the Investigating Officer had no personal interest in the matter nor had he any prejudice against the accused, and, therefore, it cannot be said that the investigation was biased. Even the deposition of the Investigating Officer clearly supports the prosecution version on all material particulars.

##. On totality of the evidence on record, it is clear that the prosecution has been able to establish its case against the accused beyond any shadow of doubt and there is no reason whatsoever to interfere with the impugned decision of the trial court on any of the contentions raised on behalf of the accused. This Court finds itself in full agreement with the reasoning adopted and the conclusions reached by the trial court for holding that the accused is guilty of the offences with which he was charged. The appeal is, therefore, dismissed. Bail is cancelled.

##. At the request of the learned counsel, the appellant is granted time upto 31st July, 2003 to surrender.

[R.K. ABICHANDANI, J.]

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